

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

February 27, 2009

Ref. No.: RPS-7425  
PSF No.: 08HD-139

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

**HAWAII**

Rescind Prior Board Action of October 24, 2008 (D-7), Issuance of Revocable Permit to Mahalo Broadcasting, LLC, Permittee; Forfeiture of Revocable Permit No. S-7425 to Skynet Hawaii LLC, Kalaoa, North Kona, Hawaii, Tax Map Key: 3<sup>rd</sup>/7-3-49: 38.

**PURPOSE:**

Rescind Prior Board Action of October 24, 2008, under Agenda Item D-7, Issuance of Revocable Permit to Mahalo Broadcasting, LLC.

Forfeiture of Revocable Permit No. S-7425, Skynet Hawaii LLC., Permittee.

**LEGAL REFERENCE:**

Section 171-55, Hawaii Revised Statutes, as amended.

**LOCATION:**

Portion of Government lands at Kalaoa, North Kona, Hawaii, identified by Tax Map Key: 3<sup>rd</sup>/7-3-49: 38, as shown on the attached map labeled **EXHIBIT A**.

**AREA:**

4.00 acres, more or less.

**TRUST LAND STATUS:**

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution:

YES \_\_\_\_ NO X

CHARACTER OF USE:

Radio tower for synchronous transmission and accessory building site purposes.

COMMENCEMENT DATE OF PERMIT:

Commenced on February 20, 2007.

MONTHLY RENTAL:

\$ 750.00.

REMARKS:

Pursuant to the provisions contained in Revocable Permit S-7425, Skynet Hawaii LLC, Permittee, was mailed a default notification letter (**EXHIBIT B**), dated July 11, 2008 for:

- ☒ Failure to keep lease rental payments current
- ☐ Failure to post required security deposit
- ☐ Failure to post required fire insurance policy
- ☐ Failure to post required liability insurance policy
- ☐ Other:

This notice offered the Permittee a thirty-day cure period to correct the default. This cure period expired on August 11, 2008. As of February 27, 2009, this breach has not been cured.

As of February 27, 2009, the current status of all permit compliance items is as follows:

RENT: The Permittee has a rental delinquency of \$5,250.00, plus Late Fees of \$300.00 for the time period from August 1, 2008 to February 1, 2009. (**EXHIBIT C**)

INSURANCE: The Permittee has failed to post the required liability insurance policy. Last certificate on record has an expiration of March 5, 2007.

SECURITY DEPOSIT: The Permittee has posted the required security deposit.

OTHER: None.

Staff reviewed the file and can report that for the past two (2) years, a Notice of Default for rent was sent on 10/5/07, 7/11/08, 10/27/08, and 1/23/09. The 1/23/09 Notice was sent Certified with return receipt, which was accepted and acknowledged on January 27, 2009 by Mr. Dan Deeb of Mahalo Broadcasting LLC, as the new owner of the radio station. **(EXHIBIT D)** A Notice of Default was sent on 4/25/08 **(EXHIBIT E)** for liability insurance. On May 5, 2008, HDLO received an insurance certificate from Mahalo Broadcasting for periods covering 10/19/07 to 10/19/08. The Certificate could not be accepted, as Mahalo Broadcasting is not yet an approved Permittee of the State.

### **BACKGROUND:**

At its meeting of April 22, 2005, Item D-6, the Board of Land and Natural Resources approved Termination of Revocable Permit No. S-7139 to Big Island Radio; and Issuance of Revocable Permit No. S-7425 to Skynet Hawaii LLC. This request, an after-the-fact disposition, was necessary as Skynet was already on the property due to purchase of the radio station the year before. At time of the request, Skynet claimed to be the designated primary radio station for the Hawaii Civil Defense-Emergency Broadcast System.

On occasions payments were lagging, requiring notices of default for rent to be sent to Permittee. Payments would usually be received just before the end of the cure period, however, payments completely ceased as of August 2008.

On May 5, 2008, HDLO received a Certificate of Liability Insurance for periods covering 10/19/07-10/19/08, which indicated that the Insured was now Mahalo Broadcasting, LLC. Staff contacted the radio station and spoke to a Dan Deeb, General Manager/Owner of Mahalo Broadcasting, LLC. Mr. Deeb informed staff that he purchased the radio station on October 2007 and claims he was not aware the permit was non-transferable. The circumstances he described appeared to be identical to the situation of when Skynet obtained possession of the property. Staff assisted Mr. Deeb with procedures for obtaining a new revocable permit for Mahalo Broadcasting, LLC. Mahalo Broadcasting was allowed to remain on the property to provide uninterrupted radio services with the understanding that payments would need to be kept current as the new revocable permit is processed.

At its meeting of October 24, 2008, Item D-7, the Board approved the Cancellation of Revocable Permit No. S-7425 to Skynet Hawaii LLC, and Issuance of new Revocable Permit to Mahalo Broadcasting, LLC.


On October 27, 2008, Mr. Deeb was notified of the Land Board Meeting Results, which included a request for remittance of checks to bring the rent current. When Mahalo Broadcasting failed to submit the necessary payments for rent as promised, staff followed up with phone calls and letters. In one of our telephone conversations, Mr. Deeb informed of difficulties experienced in obtaining the required tax clearances, but would forward checks to bring the account current. Mr. Deeb made a number of commitments by phone to bring the account current, all of which were broken. Accordingly, staff is now recommending that the Board: 1) rescind its prior actions of October 24, 2008 (D-7),

Issuance of Revocable Permit to Mahalo Broadcasting, LLC; and 2) request Forfeiture of Revocable Permit No. S-7425 to Skynet Hawaii LLC.

RECOMMENDATION: That the Board:

1. Rescind its prior actions of October 24, 2008, Item D-7, Issuance of Revocable Permit to Mahalo Broadcasting, LLC.,
2. Authorize the cancellation of Revocable Permit No. S-7425 to Skynet Hawaii LLC, in the manner specified by law;
3. Authorize the retention of all sums heretofore paid or pledged under Revocable Permit No. S-7425 to be applied to any past due amounts;
4. Terminate the permit and all rights of Permittee and all obligations of the Permitter effective as of February 27, 2009, provided that any and all obligations of the Permittee which have accrued up to said effective date or which are stated in the lease to survive termination shall endure past such termination date until duly fulfilled, and further provided that Permitter reserves all other rights and claims allowed by law;
5. Authorize the Department of the Attorney General, the Department of Land and Natural Resources, or their agents to collect all monies due the State of Hawaii under Revocable Permit No. S-7425 and to pursue all other rights and remedies as appropriate;
6. Permittee shall be responsible for conducting a Phase 1, Environmental Site Assessment and conducting a complete abatement and disposal, if necessary, satisfactory to the standards required by the Federal Environmental Protection Agency, the Department of Health, and DLNR.
7. Permittee shall have until March 30, 2009 to vacate the property. If the property is not vacated by March 30, 2009, the State will commence eviction action, including confiscating any items remaining on the premises.

Respectfully Submitted,

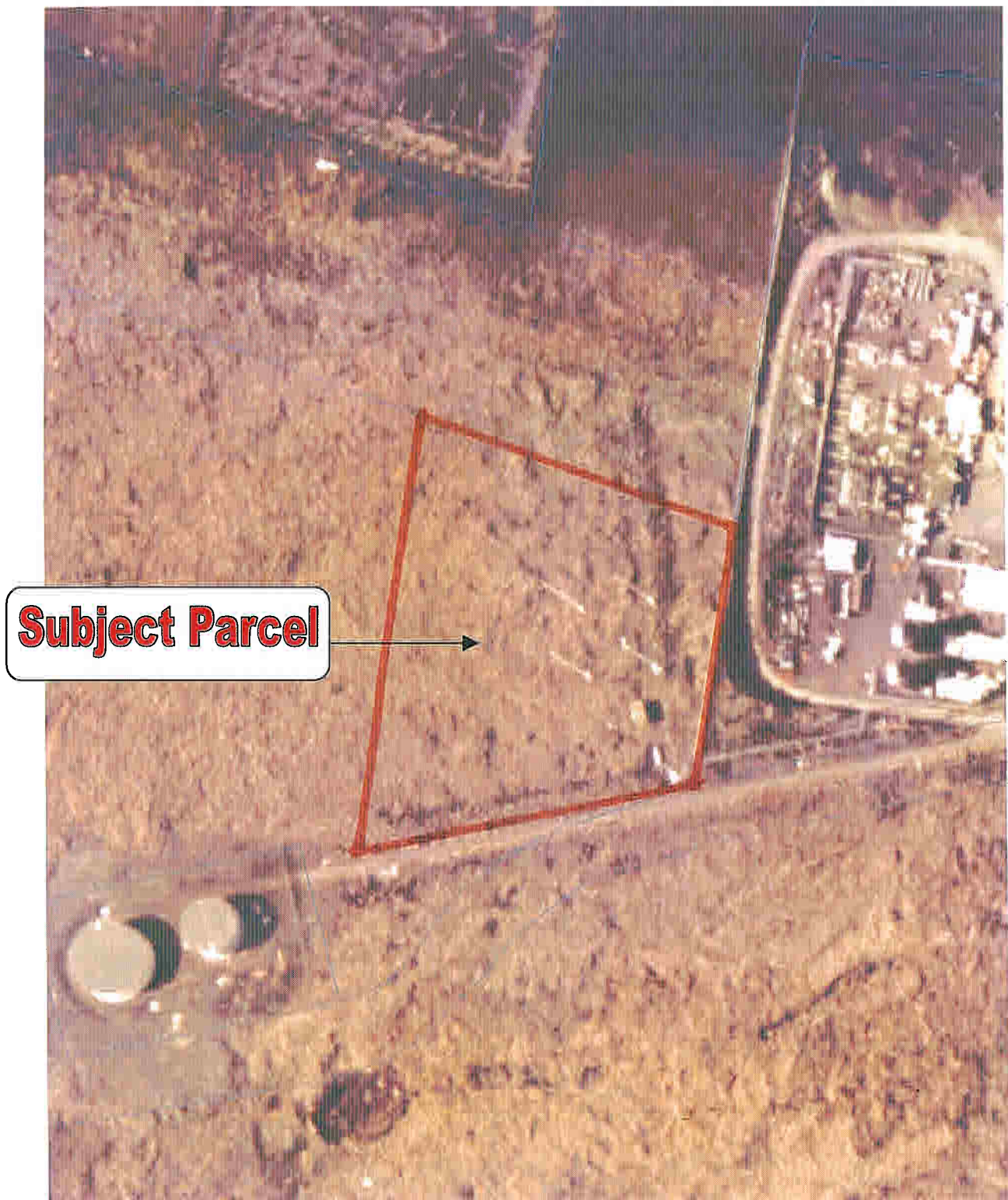
  
\_\_\_\_\_  
Wesley T. Matsunaga  
Land Agent

APPROVED FOR SUBMITTAL:

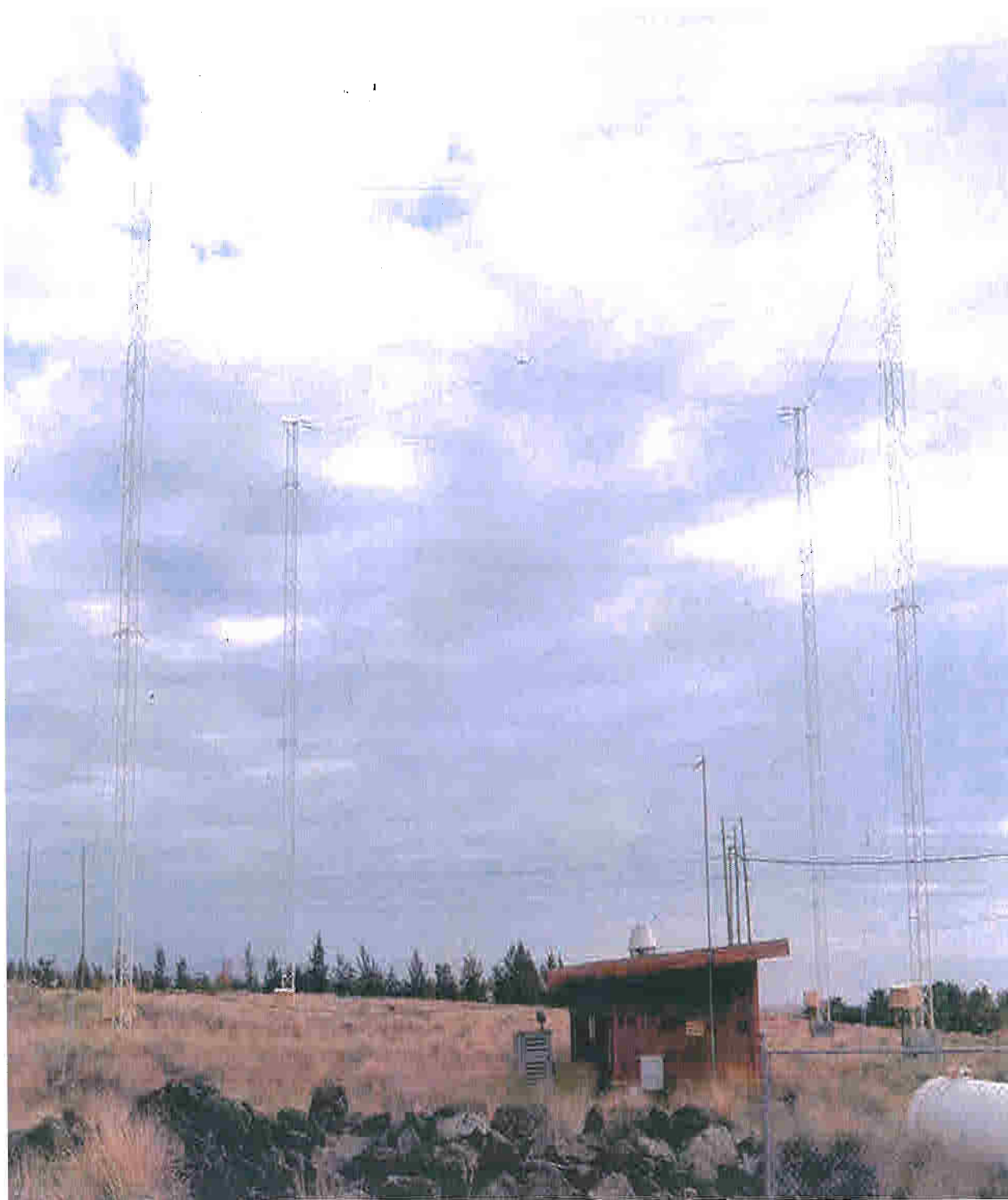
  
\_\_\_\_\_  
Laura H. Thielen, Chairperson







**EXHIBIT A**



**EXHIBIT A**

February 27, 2009

LINDA LINGLE  
GOVERNOR

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
P.O. Box 621  
HONOLULU, HAWAII 96809

LAURA H. THIELEN  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENTRUSSELL Y. TSUJI  
FIRST DEPUTYKEN C. KAWAHARA  
DEPUTY DIRECTOR - WATERAQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAIKOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

2009 JUL 15 A 10:11

July 11, 2008

Ref.: HD-RP7425

SKYNET HAWAII, LLC  
74-5605 LUHIA STREET, UNIT B-7  
KAILUA-KONA, HI 96740Subject: Revocable Permit No. S-7425

Dear Permittee:

According to our records, we have not yet received your rent payment for the month of May and June, 2008.

If we do not receive payment promptly, we will proceed with terminating your permit at an upcoming Land Board meeting. Please note that while you may pay your rent prior to the meeting, the Land Board may still uphold the termination of your permit if you have a history of delinquencies or other violations. The Board, in its deliberations, considers how many times we have had to send you this notice.

Furthermore, you may be charged 1% interest on delinquent amounts or a \$50 late fee each month your account is delinquent. Therefore, you are strongly encouraged to remit payment immediately and to consistently pay future invoice in a timely manner.

If you feel our records are in error or if you have any questions, please contact our Hawaii District Land Office at (808) 974-6203.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ken C. Kawahara".

for LAURA H. THIELEN  
Chairpersoncc: Central Office  
District Office**EXHIBIT B**



## DEPARTMENT OF LAND AND NATURAL RESOURCES



FISCAL OFFICE  
P.O. BOX 621  
HONOLULU, HAWAII 96809-0621  
(808) 587-0353  
01/19/09

DOCUMENT NUMBER

rp7425

COST CENTER: 0530

SOURCE: 1721

TOTAL DUE: \$5,550.00

SKYNET HAWAII, LLC  
74-5605 LUHIA STREET, UNIT B-7  
KAILUA-KONA, HI 96740

PLEASE DISREGARD THIS BILL IF PAYMENT HAS BEEN MADE

AMOUNT PAID: \_\_\_\_\_

PLEASE DETACH AND RETURN ABOVE PORTION WITH YOUR PAYMENT FOR PROPER CREDIT

REFERENCE		APPTO	BILLING PERIOD	DESCRIPTION	AMOUNT
DATE	NUMBER				
07/01/2008	C-135291	Total Chg.	07/01/2008 - 07/31/2008	Rentals, Temporary Permits (07/2008)	750.00
07/01/2008	C-135291	R-223132	Received: 09/17/2008	GR00024 PAYMENT	-700.00
07/01/2008	C-135291	Balance Due	07/01/2008 - 07/31/2008	Rentals, Temporary Permits (07/2008)	50.00
08/01/2008	C-136653	Balance Due	08/01/2008 - 08/31/2008	Rentals, Temporary Permits (08/2008)	750.00
09/01/2008	C-137931	Balance Due	09/01/2008 - 09/30/2008	Rentals, Temporary Permits (09/2008)	750.00
09/01/2008	C-139093	Balance Due	*:Late1	Late Fee	50.00
10/01/2008	C-139374	Balance Due	10/01/2008 - 10/31/2008	Rentals, Temporary Permits (10/2008)	750.00
10/01/2008	C-140387	Balance Due	*:Late1	Late Fee	50.00
11/01/2008	C-140731	Balance Due	11/01/2008 - 11/30/2008	Rentals, Temporary Permits (11/2008)	750.00
11/01/2008	C-142170	Balance Due	*:Late1	Late Fee	50.00
12/01/2008	C-142484	Balance Due	12/01/2008 - 12/31/2008	Rentals, Temporary Permits (12/2008)	750.00
12/01/2008	C-143850	Balance Due	*:Late1	Late Fee	50.00
01/01/2009	C-144205	Balance Due	01/01/2009 - 01/31/2009	Rentals, Temporary Permits (01/2009)	750.00
01/01/2009	C-145744	Balance Due	*:Late1	Late Fee	50.00
02/01/2009	C-145988	Balance Due	02/01/2009 - 02/28/2009	Rentals, Temporary Permits (02/2009)	750.00

Please Make Check Payable To: "Land &amp; Natural Resources"

PAST DUE AMOUNTS MAY BE SUBJECT TO A 1% PER MONTH FINANCE CHARGE AND A LATE FEE  
THE STATUS OF YOUR ACCOUNT IS AS FOLLOWS:

CURRENT	1-30	31-60	OVER 60	TOTAL DUE
750.00	800.00	800.00	3,200.00	\$ 5,550.00

DOCUMENT  
NUMBER

rp7425

EXHIBIT C

LINDA LINGLE  
GOVERNOR OF HAWAII



LAURA H. THIELEN  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
LAND DIVISION**

75 Auuni Street, Room 204  
Hilo, Hawaii 96720  
PHONE: (808) 974-6203  
FAX: (808) 974-6222  
January 23, 2009

Ref No. 08HD-139

CERTIFIED MAIL 7005 1820 0007 4789 4822

Mr. Dan Deeb  
Mahalo Broadcasting LLC  
74-5605 Luhia Street, Suite #B-7  
Kailua-Kona, HI 96740

Dear Mr. Deeb:

**SUBJECT: Issuance of Revocable Permit to Mahalo Broadcasting LLC for Radio Tower for Synchronous Transmitters and Accessory Building Site Purposes at Kalaoa, North Kona, Hawai'i – Tax Map Key:3rd/7-3-49:38**

This letter is a follow-up to our conversation of January 8, 2009, when we again requested payment of delinquent and current rents and provision of State of Hawai'i and County of Hawai'i tax clearances in order to proceed with issuance of a new month-to-month revocable permit to Mahalo Broadcasting LLC for radio tower for synchronous transmitters and accessory building site purposes. Our first request to you was in our letter dated October 27, 2008, (copy enclosed) notifying you of the October 24, 2008, Land Board meeting results.

To date, we have not received your rental payments nor the requisite State of Hawai'i and County of Hawai'i tax clearances. The rents and fees now past due totaling **\$8,530.00** are for the following:

Rents & Late Fees August '08 - January '09	\$5,500.00 (\$5,100.00 rent/\$450.00 late fees)
Rent (two months in advance)	1,500.00
Security Deposit	1,500.00
Document Fee	30.00
<b>TOTAL:</b>	<b>\$8,530.00</b>

**EXHIBIT D**

Mr. Dan Deeb  
 Mahalo Broadcasting LLC  
 January 23, 2009  
 Page 2

Should we not receive your payment of \$8,530.00 together with your State and County tax clearances by January 30, 2009, we will rescind our Board action to issue a revocable permit to Mahalo Broadcasting LLC and initiate actions to have you vacate the State property and to collect back rents due.

Regretfully,

*Wesley T. Matsunaga*  
 Wesley T. Matsunaga  
 Land Agent

c: Land Board Member  
 Central file

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> <li>Complete Items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>Print your name and address on the reverse so that we can return the card to you.</li> <li>Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>		A. Signature <input checked="" type="checkbox"/> <i>Dan Deeb</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee	
1. Article Addressed to: Mr. Dan Deeb Mahalo Broadcasting LLC 74-5605 Luhia Street Suite #B-7 Kailua-Kona, HI 96740		B. Received By (Printed Name) <i>DAN DEEB</i> C. Date of Delivery <i>1-28</i>	
2. Article Number 08HD-139		3. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.		4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	

U.S. Postal Service<sup>TM</sup> 08HD-139  
**CERTIFIED MAIL<sup>TM</sup> RECEIPT**  
 (Domestic Mail Only; No Insurance Coverage Provided)  
 For delivery information visit our website at [www.usps.com](http://www.usps.com)

**OFFICIAL USE**

Postage	\$ .42
Certified Fee	2.70
Return Receipt Fee (Endorsement Required)	2.20
Restricted Delivery Fee (Endorsement Required)	
<b>Total Postage &amp; Fees</b>	<b>\$ 5.32</b>

Sent To: Mr. Dan Deeb  
 Mahalo Broadcasting LLC  
 Street, Apt. No., or PO Box No. 74-5605 Luhia Street  
 City, State, ZIP+4 Suite #B-7  
 Kailua-Kona, HI 96740

PS Form 3800, June 2002<sup>®</sup> See Reverse for Instructions

ice label 7005 1820 0007 4789 4822  
 February 2004 Domestic Return Receipt 102595-02-M-154

**EXHIBIT D**

February 27, 2009

LINDA LINGLE  
GOVERNOR OF HAWAII



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

2008 APR 29 A 10:33

April 25, 2008

LAURA H. THIELEN  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL Y. TSUJI  
FIRST DEPUTY

KEN C. KAWAHARA  
DEPUTY DIRECTOR - WATER

ADAPTIVE RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LAND  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FOREST AND WILDLIFE  
HISTORIC PRESERVATION  
KAIKOLA WEI AND RESERVE COMMISSION  
LAND  
STATE PARKS

Ref: HD-RP7425

SKYNET HAWAII, LLC  
74-5605 LUHIA STREET, UNIT B-7  
KAILUA-KONA, HI 96740

Dear Permittee:

SUBJECT: Revocable Permit No. S-7425

A review of your file indicates you have not submitted a current liability insurance certificate. The insurance certificate on file expired March 5, 2008. Please submit a current liability insurance certificate naming the State as additional insured.

This letter gives you thirty (30) days from the day of receipt of this letter to resolve the problem.

If you no longer wish to continue holding this revocable permit, you need to write to us requesting the revocable permit be cancelled effective in 25 days.

Should you have any questions, please contact our Hawaii District Land Office at (808) 974-6203.

Very Truly Yours,

A handwritten signature in cursive script, reading "Charlene E. Unoki".

Charlene E. Unoki  
Assistant Administrator

cc: District Files  
Central

**EXHIBIT E**